IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

WRIT PETITION No.6748 OF 2006.

Ms. Niraj Singh,
Age 43 years,
Indian Inhabitant,
R/at : K-12, Nausena Bag-1,
Near Chankya Cinelma,
Chanakya Puri,
New Delhi 100 021. .. PETITIONER.

Vs.

1. **Shishu Vihar Mandal**
Through : the Secretary,
V/s. Shishu Vihar Madhyamik Vidya
Mandir, Opp. Raja Shivaji Vidyalaya,
Dadar, Mumbai-400 014.

2. Headmistress,
Shishu Vihar Madhyamik Vidya Mandir,
Opp. Raja Shivaji Vidyalaya,
Dadar, Mumbai-400 014.

3. Nirmala Waghela,
Shishu Vihar Madhyamik Vidya Mandir,
Opp. Raja Shivaji Vidyalaya,
Dadar, Mumbai-400 014.

4. The Deputy Director of Education,
Charni Road, Mumbai.

5. The Education Inspector,
West Zone, Jogeshwari (E),
Mumbai-400 060. .. RESPONDENTS.

Mr. Sachin B. Thorat with Pramod Patil Advocate for the Petitioner.

Mr. Dilip Bodake, Advocate for the Respondent No.1.

None for Respondent Nos. 2 and 3 though served.

Ms. V. S. Mhaispurkar, A.G.P. for

Respondent Nos. 4 and 5.

CORAM:R.M.S.KHANDEPARKAR,J.

DATED:14th DECEMBER, 2006.

ORAL JUDGMENT.

1. Heard. Rule. By consent, the rule is made returnable forthwith.

2. The petitioner challenges the judgment and order dated 27th February, 2006 passed by the School Tribunal, Mumbai in Appeal No. 123/2000. The challenge is on the ground that irrespective of the nature of the appointment letter issued by the Management, the petitioner was deemed to have been appointed on probation in terms of Section 5 of the M.E.P.S.Act read with Rule 10 of the M.E.P.S.Rules and, therefore, the Management could not have terminated the services of the petitioner without following the usual procedure prescribed under the law which would include issuance of notice, holding of inquiry and appropriate order. In the case in hand, undisputedly, the petitioner was sought to be terminated by issuing an order dated 28th March, 2006 informing the petitioner that

her services would stand terminated with effect from 29th April, 2000. It was also sought to be contended that though the appointment order discloses that the petitioner was appointed in the post meant for reserved category, the roster which was maintained by the Management discloses that the petitioner was in fact appointed in the post meant for open category.

3. It is not in dispute that the petitioner was appointed under the appointment letter dated 13th of July, 1998. The said letter of appointment dated 13th July, 1998 apparently discloses that the petitioner had applied for the post of Asstt. teacher and she was accordingly called for the interview on 11th July, 1998 and thereafter on selection, she was appointed as the Assistant Teacher. It is not in dispute that she continued to be a teacher in the respondent's school till April, 2000 and persuant to the letter dated 28th March, 2000 her services were sought to be terminated with effect from 29th April,2000 and intimation in that regard was given to her one month in advance.

4. Section 5 of the M.E.P.S.Act deals with certain obligations of the Management of Private Schools. In terms of Sub Section (1) thereof the Management is required to fill up a permanent vacancy in the manner prescribed for the same by appointing a person duly qualified to fill such vacancy. Sub Section (2) based on which the entire dispute is sought to be raised by the petitioner reads thus:-

> "Every person appointed to fill a permanent vacancy shall be on probation for a period of two years, Subject to the provisions of sub-sections (3) and (4), he shall, on completion of this probation period of two years, be deemed to have been confirmed."

5. The word "year" has not been defined in M.E.P.S. Act. However, Section 3 (66) of the General Clauses Act, 1897 defines the term "year" to mean a year reckoned according to the British calendar. The period of two years contemplated under Sub Section (2) of Section 5 of the M.E.P.S.Act would therefore, commence from the date of appointment of the employee in a permanent vacancy. Considering the same,

even assuming that the petitioner was appointed in a permanent vacancy meant for open category to which the petitioner belongs, the period of two years from the date of appointment would have been over on 12th July, 2000.

6. It is however, sought to be contended that the period of two years must be counted with reference to academic years and in that context the petitioner must be presumed to have completed two academic years as she was appointed in the academic year 1998-99 and continued to be in employment in the academic year 1999-2000. However, it is not in dispute that every academic year commences from 1st June of the year. Being so, even assuming that she had continued in employment for the second academic year, the permanency in terms of Sub Section (2) of Section 5 which can be acquired by the employee who is appointed in the permanent vacancy in terms of Section 5(1) of the M.E.P.S. Act, would be on completion of the period of two years and provisions of Sub Section (3) would apply to continue to such appointees during the entire period of

two years i.e. till the expiry of two years. Sub Section 3 provides that if in the opinion of the management the work or behaviour of any probationer during the period of his probation, is not satisfactory, the Management may terminate his services at any time during the said period after giving him one month's notice (or salary of one month in lieu of notice.)

7. Undisputedly, that the order of termination was issued giving one month's notice before the actual date of termination. The provisions of Sub Sections (2) and (3) of Section 5 would, therefore, reveal that till the completion of the period of probation of two years, no right as such is acquired by the employee to insist for the issuance of charge sheet and holding of domestic inquiry by the management prior to the termination of services of such employee. In other words, till the expiry of the period of probation, the management is entitled to terminate services of the probationer by issuing one month's notice or on payment of salary of one month in lieu of such period of notice.

8. In the case in hand, as already seen above, the notice of termination was issued on 28th March, 2000 informing the petitioner that her services would stand terminated with effect from 29th April, 2000. Being so, by no stretch of imagination, it can be said that the action for termination was sought to be given effect to on completion of or after the expiry of period of two years, calculated by reckoning the said period of two years according to the British calendar from the date of appointment or even considering the same on the basis of academic years. Therefore, no fault can be found with the order issued by the management on 28th March, 2000 in relation to the termination of services of the petitioner and considering the same all other issues which are sought to be raised by the petitioner become redundant and are not required to be considered at all. Hence no jurisdictional error can be found in the impugned order passed by the Tribunal so as to warrant interference therein in exercise of power under Article 227 of the Constitution. Therefore, the petition fails

and is hereby dismissed. The rule is discharged with no order as to costs.

[R.M.S.KHANDEPARKAR,J]